

**CODE OF ETHICS AND CONDUCT  
OF THE MEMBERS OF THE NATIONAL ASSEMBLY<sup>1</sup>**

**FILE: DE-02-2012**

**ETHICS COMMISSIONER'S REPORT  
TO THE PRESIDENT OF THE NATIONAL ASSEMBLY**

**with regard to Mr. Tony Tomassi,  
Member for LaFontaine until May 3, 2012**

**JACQUES SAINT-LAURENT  
ETHICS COMMISSIONER**

**June 7, 2012**

---

1. R.S.Q., chapter C-23.1.

---

## **PREAMBLE**

[1] The purpose of the *Code of Ethics and Conduct of the Members of the National Assembly* (the Code) is to affirm the principal values of the National Assembly embraced by its Members, to set out the rules of conduct which they must observe, and to provide for the application and enforcement of those rules.<sup>2</sup>

[2] The Ethics Commissioner is responsible for the administration of the Code and comes under the National Assembly.<sup>3</sup>

[3] In addition to rules of conduct applicable to all Members,<sup>4</sup> the Code sets out special rules of conduct for Cabinet Ministers,<sup>5</sup> including rules concerning the Members' attendance record.<sup>6</sup>

[4] A Member who has reasonable grounds for believing that another Member has violated sections 10 to 40 or 42 to 61 of the Code may request that the Ethics Commissioner conduct an inquiry into the matter.<sup>7</sup> The request must be made in writing and set out the reasonable grounds for the belief that a violation has occurred.

[5] The Ethics Commissioner may, on the Ethics Commissioner's own initiative and after giving the Member concerned reasonable written notice, conduct an inquiry to determine whether the Member has violated this Code.<sup>8</sup>

## **INQUIRY**

[6] The rules of conduct that apply to all Members and those that apply specifically to Cabinet Ministers came into force on January 1, 2012,<sup>9</sup> including section 35, which reads as follows:

**35.** *A Member must maintain a good attendance record in carrying out the duties of office. He or she may not be absent from*

- 
2. Section 1 of the Code.
  3. Section 3 of the Code.
  4. Section 4 of the Code.
  5. Title III of the Code.
  6. Section 35 of the Code.
  7. Section 91 of the Code.
  8. Section 92 du Code.
  9. Section 133 of the Code.

*sittings of the National Assembly for an unreasonable length of time without a valid reason.*

[7] Did the Member for LaFontaine violate section 35?

[8] In point of fact, when Tony Tomassi was an independent Member for LaFontaine, from May 5, 2010, to May 3, 2012, he was present for only a few parliamentary sittings.

[9] Moreover, after the rules of conduct came into force on January 1, 2012, the Member for LaFontaine did not participate in a single sitting of the National Assembly. According to the 2011–2012 calendar, the regular hours of meeting of the National Assembly resumed on February 14, 2012.

### **FACTS OF THE CASE**

[10] The *Code of Ethics and Conduct of the Members of the National Assembly* was assented to on December 8, 2010. A number of provisions came into force on that date, including Title I respecting values and ethical principles and the appointment of an Ethics Commissioner, whose term began on January 6, 2011.

[11] On February 3, 2011, the Member for LaFontaine communicated with the undersigned Commissioner concerning a police investigation in progress regarding the Member. He mentioned to the Commissioner that he would prefer not to be present at the National Assembly before knowing the result of the investigation and whether any charges would be laid against him.

[12] The Member for LaFontaine and the Commissioner conducted a phone conversation on February 16, 2011, and held a meeting at the Member's office in the Parliament Building on February 22, 2011.

[13] Subjects of discussion included the date of coming into force of section 35 of the Code (not later than January 1, 2012), the values of the National Assembly and the possible outcome of the police investigation. The Commissioner recommended that the Member for LaFontaine resume his seat in the National Assembly, as required under the Code.

[14] However, Mr. Tomassi remained in his electoral division, except to vote on the Government's budget and to elect a new President of the National Assembly.

[15] On December 20, 2011, with the rules of conduct applicable to all Members, including section 35, soon to come into force, the Commissioner met with the Member for LaFontaine and his lawyer in Montréal.

[16] During that meeting, the Member for LaFontaine reiterated the reasons which he believed justified his decision to remain absent from the National Assembly. Taking into consideration Mr. Tomassi's duties as a Member and the expectations of the population, the Commissioner asked him to be present at the National Assembly, given that section 35 was to come into force a few days later. The Commissioner added that the sections of the Code relating to inquiries and reports, sanctions, and the decisions of the National Assembly were to come into force on January 1, 2012, at which point the Commissioner would be empowered to conduct an inquiry.

[17] Also during that meeting, the lawyer of the Member for LaFontaine asked the Commissioner whether the Member's state of health would be considered in the analysis of what constituted a valid reason to be absent from sittings, within the meaning of section 35.

[18] The Commissioner stated that health-related reasons could be considered valid. Each case must be considered individually, with recourse to the opinion of health professionals if necessary.

[19] On February 13, 2012, the Member for LaFontaine informed the Commissioner of his situation by a letter which included a medical note. His doctor indicated that the Member would be absent as of February 8, 2012, for an indeterminate period of time.

[20] On February 14, 2012, sittings of the National Assembly resumed.

[21] On February 24, 2012, the Commissioner informed the Member for LaFontaine that the medical note had to be supplemented by a complete medical report, with full particulars regarding, among other things, the diagnosis, the treatment, the disability period and the follow-up. The Commissioner also asked the Member for LaFontaine to sign an authorization to communicate medical and psychomedical information to the health professional designated by the Commissioner.

[22] On March 5, 2012, the Member for LaFontaine provided the Commissioner with the additional information and sent him a signed authorization to communicate medical and psychomedical information.

[23] On that occasion, the Member for LaFontaine submitted a second medical note from the same attending physician which indicated, among other things, that Mr. Tomassi had to be seen by a medical specialist. The Member for LaFontaine informed the Commissioner that it had not yet been possible to be seen by a medical specialist as per the instructions of his attending physician.

[24] On March 7, 2012, the Commissioner and the Member for LaFontaine conducted a phone conversation. The Member wished to inform the Commissioner of the reply he had sent on March 5 and also to give a few details concerning the steps he had taken to be seen by a medical specialist.

[25] On March 14, 2012, the Commissioner wrote to the Member for LaFontaine in reply to the latter's letter of March 5. While maintaining that the improvement of the Member's health was the top priority, the Commissioner nevertheless stated that the two medical notes he had received up to that point were not sufficient for the purpose of appropriately evaluating the reason for the Member's absence from sittings within the meaning of section 35. A complete medical report giving full reasons was indispensable in the circumstances.

[26] On the same occasion, the Commissioner gave notice to the Member for LaFontaine under section 92 to the effect that the Commissioner intended to conduct an inquiry as of March 26, 2012, to determine whether Mr. Tomassi had violated the Code.

[27] On March 21, 2012, the Member for LaFontaine wrote to the Commissioner to clarify certain points. Mr. Tomassi was still waiting to be seen by a medical specialist. He well understood the Commissioner's request for a complete medical report giving full reasons, but was not in a position to provide one at that point. In the circumstances, the Member for LaFontaine could only refer the Commissioner to the medical notes already sent. He pointed out that these notes had been prepared by a health professional and should be taken into account by the Commissioner.

[28] On April 5, 2012, the Commissioner contacted a medical specialist in Montréal to ask him for an expert opinion concerning the health of the Member for LaFontaine in order, first of all, to give the latter all the support required in the circumstances and, secondly, to enable the Commissioner to determine under section 35 whether the Member's state of health constituted, in the circumstances, a valid reason for being absent from sittings of the National Assembly.

[29] On April 10, 2012, the Commissioner contacted Mr. Tomassi by phone to let him know that a medical expert had agreed to see him and that an appointment had been made for the afternoon of April 20.

[30] On April 20, 2012, the medical expert designated by the Commissioner carried out an examination in order to give a diagnosis concerning the state of the Member's health, to evaluate his ability to exercise his parliamentary duties, including his ability to be present for sittings of the National Assembly, to describe the treatment that might be suggested in the circumstances and to make a prognosis.

[31] On April 27, 2012, the Commissioner received, by messenger service, a letter dated April 24 from the Member for La Peltrie, Éric Caire, asking him to conduct an inquiry under section 35 and citing [TRANSLATION] "*the repeated and unjustified absences of the Member for LaFontaine, which place him in violation of that section.*"

[32] On April 30, 2012, the undersigned informed Mr. Tomassi of the inquiry request by the Member for La Peltrie.

[33] On May 3, 2012, the Member for LaFontaine informed the Commissioner by phone that he was resigning his position and giving up his seat as a Member of the National Assembly. He added that a letter to that effect had been sent to the Secretary General of the National Assembly.

[34] On May 4, 2012, the medical expert designated by the Commissioner phoned the latter in order to give him the expert opinion.

[35] The medical expert informed the Commissioner that, for health reasons, Mr. Tomassi was unable to exercise his parliamentary duties. The examination did not make it possible for the medical expert to determine when Mr. Tomassi would be able to resume those duties. At that point, it did not seem possible to envisage the Member's return to the National Assembly.

[36] The medical expert's report was made on May 23, 2012.

**Éric Caire:**

[37] In order to hear the observations of the Member for La Peltrie for the purposes of the inquiry, a meeting was held at the Commissioner's office on May 31, 2012. The Member for La Peltrie was accompanied by Guillaume Simard-Leduc, researcher for the Coalition Avenir Québec. The undersigned was

accompanied by the clerk, Dominique Baron. Mr. Caire and Mr. Simard-Leduc presented the following observations.

[38] The Member for La Peltrie referred the Commissioner to the National Assembly's website, where the Member's role is defined as being that of legislator, overseer and intermediary. He submitted that the role of legislator could only be exercised at the National Assembly. The Member for LaFontaine had been absent since becoming an independent Member and had been unable to exercise his role as legislator.

[39] Similarly, the Member for La Peltrie submitted that Mr. Tomassi had not exercised his oversight role, since the principal means for exercising that role are found within the precincts of the National Assembly. The Member for LaFontaine had not participated in the recently completed examination of appropriations, and had not overseen government action, as he might have done, by means of Question Period, interpellations, debates upon adjournment and motions.

[40] The Member for La Peltrie submitted that Mr. Tomassi had only partly exercised his role as intermediary.

[41] Hence, the Member for LaFontaine had allegedly violated section 35 by being absent from the sittings of the National Assembly for an unreasonable length of time without a valid reason. The Member for La Peltrie asked the Commissioner to recommend that the following sanctions be imposed upon the Member for LaFontaine.

[42] Submitting that the prolonged absence of the Member for LaFontaine severely discredited and cast a slur on the office of Member, the Member for La Peltrie recommended that the Member for LaFontaine be severely reprimanded.

[43] Given the failure of the Member for LaFontaine to exercise his role at the National Assembly, the Member for La Peltrie asked the Commissioner to recommend that the Member for LaFontaine be required to pay back all indemnities, allowances and other sums received, for the entire period when he was absent from sittings of the National Assembly, including the termination pay resulting from his resignation on May 3, 2012.

**Tony Tomassi:**

[44] In order to hear Mr. Tomassi's observations, another meeting was held at 500 boulevard René-Lévesque Ouest in Montréal, on June 1, 2012. Mr. Tomassi

was accompanied by his lawyer, Joseph La Leggia. The undersigned was accompanied by the clerk, Dominique Baron. Mr. Tomassi and Mr. La Leggia presented the following observations.

[45] First, Mr. Tomassi's lawyer noted that the former suffered from a serious health problem that prevented him from being present at sittings of the National Assembly, as confirmed by the expert opinion of May 23, 2012.

[46] This formal diagnosis concerning Mr. Tomassi's state of health showed why he was unable to attend sittings of the National Assembly for several months.

[47] The same symptoms, it was maintained, had prevented him from attending sittings for the period prior to January 1, 2012.

[48] It was further maintained that the Member for LaFontaine had acted with diligence. After the examination carried out by the medical expert on April 20, 2012, and the latter's report which characterized as "practically nil" the possibility of Mr. Tomassi's resuming his parliamentary duties, Mr. Tomassi quickly resigned.

[49] The Member for LaFontaine explained that during 2011 he kept hoping that the police investigation would come to an end without charges being laid against him, in which case he would have been able to return to the National Assembly.

[50] Mr. Tomassi's lawyer noted that his client had a real health problem that had to be taken into account. Despite this difficult state of health, he had taken the necessary measures to exercise, in his electoral division, his duties as a Member.

[51] Since he had not violated section 35, the Member for LaFontaine submitted that he should not be subject to sanctions. Having continued to exercise his duties as a Member until May 3, 2012, he maintained that he was entitled to the indemnities and allowances he had received.

### **Resignation of Tony Tomassi**

[52] The Member for LaFontaine resigned on May 3, 2012. Under section 81 of the Code, the Ethics Commissioner retains his or her authority in respect of a former Member for a period of five years:

**81.** *The Ethics Commissioner retains his or her authority in respect of a former Member for a period of five years after the end*



*of the person's term. Even after the expiry of that period, the Ethics Commissioner may continue an inquiry that had already begun.*

### **APPLICATION OF SECTION 35 OF THE CODE**

[53] To determine whether the Member for LaFontaine violated section 35, it must first be determined whether, in the circumstances, he failed to attend sittings of the National Assembly given the fact that he exercised his duties as an MNA in his electoral division. Second, if such a failure did in fact take place, it must be considered whether there was a valid reason for it. Third, if there was no valid reason, I must consider the duration of the failure in order to determine whether it constitutes an unreasonable length of time.

#### **Absence from sittings**

[54] When section 35 states that a Member may not be absent from sittings of the National Assembly for an unreasonable length of time without a valid reason, one naturally thinks of the parliamentary proceedings of the National Assembly held in the House or in committee. However, as stipulated in the first recital of the Code, a Member's role combines several important responsibilities:

*AS, in their capacity as representatives of the people of Québec, Members of the National Assembly take part in the passage of legislation and the making of regulations, exercise the National Assembly's power of supervision over the actions of the Government and its departments, bodies and agencies, assist individuals and groups who request help in their relations with the State, and participate in public debate.*

[55] The Member for La Peltrie submitted to the Commissioner a text from the National Assembly's website which describes the Member's three main roles, namely, those of legislator, overseer and intermediary.

[56] While considering all these roles, it seems to me that section 35 places particular importance on parliamentary proceedings, since it stipulates that a Member may not be absent from sittings of the National Assembly for an unreasonable length of time without a valid reason.

[57] During parliamentary proceedings, each Member of the National Assembly represents all the citizens of his or her electoral division. In the electoral division of LaFontaine, there are more than 35,000 electors.

[58] In my view, it is essential for the citizens of an electoral division to have the opportunity, among other things, to be informed by their Member of the nature and impact of bills, to obtain information on the various points of view being expressed, and to be kept abreast of the state of progress of National Assembly proceedings. Through their Member, citizens must be able to offer their own observations and comments. Moreover, it need hardly be said that, whenever a Member is called upon to vote at the National Assembly, several thousand people, through that vote, are participating in the democratic process.

[59] With regard to attendance, I believe it is essential to consider whether or not the Member actually attended sittings of the National Assembly, as required under section 35.

[60] Hence, the electoral division work referred to by Mr. Tomassi is not enough, given the specific requirements of section 35.

[61] After becoming an independent Member, Mr. Tomassi only occasionally participated in sittings of the National Assembly. Even if he was available in his electoral division, I am of the opinion that he was absent from sittings at the National Assembly within the meaning of section 35.

### **Valid reason**

[62] Did Mr. Tomassi have a valid reason for his absence?

[63] The Member for LaFontaine affirmed that, for the period following the coming into force of section 35 on January 1, 2012, he had a valid health reason, as confirmed by a medical expert.

[64] For the period prior to January 1, 2012, Mr. Tomassi submitted that he did not violate the Code, since section 35 was not in force. Moreover, he affirmed that the same health reasons prevented him from attending National Assembly sittings in 2011.

[65] It is indeed the case that on February 13, 2012, the Member for LaFontaine informed the Commissioner that he could not, for medical reasons, attend sittings of the National Assembly.

[66] In light of the medical examination carried out on April 20, 2012, the medical expert found that Mr. Tomassi was [TRANSLATION] "*unable to exercise his duties as a Member, and principally to attend sittings of the National Assembly.*"

[67] The medical expert added that:

[TRANSLATION] *With regard to the prognosis as to Mr. Tomassi's chances of resuming his work as a Member, they are practically nil in the present circumstances.*

[68] In light of the opinion of the medical expert designated by the Commissioner, it appears that Mr. Tomassi had a valid health reason which justified his absence from sittings of the National Assembly as of February 2012.

[69] Given the findings of the medical expert, the Member's state of health constitutes, under section 35, a valid reason for his absence from sittings of the National Assembly.

[70] Hence, I note that, after January 1, 2012, Mr. Tomassi did not violate section 35, since he had a valid reason for being absent from sittings of the National Assembly. The inquiry request of the Member for La Peltrie, dated April 24, 2012, must be rejected.

[71] The opinion of the medical expert designated by the Commissioner disposes of section 35 for the period following January 1, 2012. I must now consider the provisions of the Code that have come into force since December 8, 2010, in particular with regard to the values of the National Assembly.

### **Values of the National Assembly**

[72] Section 6 of the Code states the following values and ethical principles:

**6.** *The following are the values of the National Assembly:*

*(1) commitment to improving the social and economic situation of Quebecers;*

*(2) high regard for and the protection of the National Assembly and its democratic institutions; and*

*(3) respect for other Members, public servants and citizens.*

*The conduct of Members must be characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice. Consequently, Members*

*(1) show loyalty towards the people of Québec;*

*(2) recognize that it is their duty to serve the citizens;*

*(3) show rigour and diligence;*

*(4) seek the truth and keep their word; and*

*(5) preserve the memory of how the National Assembly and its democratic institutions function.*

[73] In particular, subparagraph 3 of the second paragraph exhorts Members to show rigour and diligence, which must be seen as including a good attendance record.

[74] In addition, section 9 of the Code provides that:

**9.** *Members recognize that their adherence to these values is essential to maintain the confidence of the people in them and the National Assembly and enable them to fully achieve their mission of serving the public interest.*

[75] Under section 92 of the Code, which came into force on January 1, 2012, these values and ethical principles may constitute the grounds of an inquiry by the Commissioner:

**92.** *The Ethics Commissioner may, on the Ethics Commissioner's own initiative and after giving the Member concerned reasonable written notice, conduct an inquiry to determine whether the Member has violated this Code.*

[76] On the basis of this section, the Commissioner sent a notice to the Member for LaFontaine on February 14, 2012, informing him of his decision to conduct an inquiry as of the following March 26.

[77] Mr. Tomassi affirmed that the medical reasons which prevented him from attending sittings of the National Assembly since the coming into force of section 35 existed prior to January 1, 2012. He maintained that the same reasons

also justified his absence from National Assembly sittings since December 8, 2010.

[78] In my view, if the state of health of the Member for LaFontaine required, as he maintains, that he be absent from the National Assembly, he was under the obligation to take the appropriate measures as soon as possible in order to diagnose the situation and try to remedy it, so as to be able to exercise his functions as a Member.

[79] For example, if it was necessary to consult a health professional, he should have done so at the appropriate time. The persons concerned should have been informed of the context and probable duration of his absence. It may also have been necessary to consider other measures required by his state of health, so as to ensure that the citizens of his electoral division were properly represented at the National Assembly.

[80] For more than a year, after December 8, 2010, the Member for LaFontaine was absent from sittings of the National Assembly for health reasons. The following year, after the coming into force of section 35, he obtained a medical note which led to an expert medical opinion and ultimately to the Member's resignation.

[81] Despite his very difficult health situation since becoming an independent Member, in my view, Mr. Tomassi should have acted more in accordance with the Assembly's values of rigour and of serving the citizenry, in particular with regard to the establishment of a diagnosis. Even if the Member for LaFontaine was unable to sit at the National Assembly, as he maintains, he had no authority, without a diagnosis, to grant himself a prolonged leave of absence for an indeterminate period without taking other measures to ensure that all his duties as a Member could be fulfilled.

[82] In the exercise of his duties as a Member, Mr. Tomassi failed to respect the values of the National Assembly, in violation of section 6.

### **Unreasonable length of time**

[83] Section 35 provides that a Member may not be absent from sittings of the National Assembly for an unreasonable length of time without a valid reason.

[84] For the period following January 1, 2012, when section 35 was in force, the absence of the Member for LaFontaine was justified by a valid reason.

[85] As mentioned earlier, certain provisions of the Code came into force on December 8, 2010, in particular sections 6 to 9 regarding the values of the National Assembly.

[86] Concerning the facts of the case that predate January 1, 2012, I note that, for several months, the Member for LaFontaine neither referred to nor objectively demonstrated a valid reason for his absence from sittings of the National Assembly. However, he did see his doctor before section 35 came into force.

[87] The National Assembly's website shows that his last participation at a sitting of the National Assembly dates back to May 6, 2010.

[88] Whatever the diagnosis of his family doctor and the medical expert designated by the Commissioner, several months elapsed before the Member contacted a health professional for the first time, a period during which he was absent from sittings of the National Assembly. In my view, that period constitutes an unreasonable length of time.

[89] The health reasons cited by the Member for LaFontaine are real and significant. They deserve serious consideration given his difficult situation. However, as mentioned in section 6, Members must recognize that it is their duty to serve the citizens. Hence, they are under an obligation to take all necessary measures, at the appropriate time, to objectively establish a valid reason for their absence from sittings of the National Assembly for the entire period of that absence.

[90] Despite the inquiry request filed by the Member for La Peltrie, I believe it would be premature to formulate guidelines<sup>10</sup> on the interpretation of what may constitute an unreasonable length of time for being absent from sittings of the National Assembly without a valid reason. The variety of situations and each situation's unique circumstances demand a case-by-case interpretation based on the facts.

## **CONCLUSION**

[91] The Ethics Commissioner is of the opinion that, in the absence of a violation of section 35, the inquiry request filed by Éric Caire, Member for La Peltrie, on April 24, 2012, with regard to Tony Tomassi, Member for LaFontaine until May 3, 2012, must be rejected.

---

10. Section 101 of the Code.

[92] Regarding the inquiry initiated by the Commissioner on March 26, 2012, the Commissioner concludes that Tony Tomassi, Member for LaFontaine until May 3, 2012, violated section 6 of the *Code of Ethics and Conduct of the Members of the National Assembly*.

**RECOMMENDATION**

[93] At this point, the Commissioner makes no recommendation, as no violation of section 35 of the Code, which came into force on January 1, 2012, has been established.

**JACQUES SAINT-LAURENT**  
*Ethics Commissioner*

---